



PUBLIC NOTICE

Federal Communications Commission
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THE NEWS CORPORATION LIMITED AND THE DIRECTV GROUP, INC. (TRANSFERORS) AND CONSTELLATION, LLC, CARLYLE PANAMSAT I, LLC, CARLYLE PANAMSAT II, LLC, PEP PAS, LLC AND PEOP PAS, LLC (TRANSFEREES) SEEK APPROVAL TO TRANSFER CONTROL OF FCC LICENSES AND AUTHORIZATIONS HELD BY PANAMSAT LICENSEE CORP.

IB Docket No. 04-209

PLEADING CYCLE ESTABLISHED

Petitions Due: July 2, 2004
Oppositions Due: July 12, 2004
Replies Due: July 19, 2004

I. INTRODUCTION

On May 18 and May 27, 2004, The News Corporation Limited ("News Corp.") and The DIRECTV Group, Inc., f/k/a Hughes Electronics Corporation ("The DIRECTV Group" and, together with News Corp., "Transferors") and Constellation, LLC ("Constellation"), Carlyle PanAmSat I, LLC ("Carlyle PanAmSat I"), Carlyle PanAmSat II, LLC ("Carlyle PanAmSat II"), PEP PAS, LLC ("PEP PAS") and PEOP PAS, LLC ("PEOP PAS" and, together with Constellation, Carlyle PanAmSat I, Carlyle PanAmSat II and PEP PAS, "Transferees") filed applications ("Applications") pursuant to section 310(d) of the Communications Act of 1934, as amended.¹ The Applications seek consent to transfer control of various non-common carrier fixed satellite service space station and earth station licenses and authorizations held by PanAmSat Licensee Corp. ("PanAmSat LC") to the five Transferees, each of which is a limited liability company organized under the laws of the State of Delaware. The five Transferees are owned by private equity partnerships (the "Private Equity Funds") associated with three U.S. private investment firms: Kohlberg Kravis & Roberts Co. L.P. ("KKR"); TC Group, L.L.C., d/b/a The Carlyle Group ("Carlyle"); and Providence Equity Partners, Inc. ("Providence").

II. THE TRANSACTION

On April 20, 2004, The DIRECTV Group and its wholly-owned subsidiary, PAS Merger Sub, Inc. ("PAS Merger Sub"), a Delaware corporation, entered into a Transaction Agreement with Constellation and PanAmSat Corporation ("PanAmSat"), the parent company of PanAmSat LC. On May 17, 2004, Constellation entered into separate agreements whereby each of the other four Transferees has

¹ 47 U.S.C. §310(d).

agreed to acquire a minority equity interest in PanAmSat. Through the proposed transaction, the Transferees would become the owners of more than 99 percent of the stock of PanAmSat. Constellation would hold about 44.44 percent of the equity and voting interests in PanAmSat; Carlyle PanAmSat I and Carlyle PanAmSat II together would hold about 27.41 percent of the equity and voting interests in PanAmSat; and PEP PAS and PEOP PAS together would hold about 27.41 percent of the equity and voting interests. The remainder of the stock would be held by certain employees of PanAmSat who have agreed not to have certain of their equity interests in PanAmSat cashed out in the transaction. After the transaction, the board of directors of PanAmSat would consist of nine individuals: four appointed by Constellation, two appointed by the Carlyle-affiliated entities, two appointed by the Providence-affiliated entities, and the CEO of PanAmSat.

The proposed transaction would take place in two main steps. First, after receipt of stockholder approval and satisfaction of other closing conditions set forth in the Transaction Agreement, PAS Merger Sub would merge with and into PanAmSat and each outstanding share of common stock of PanAmSat (other than the common stock held by the subsidiaries of The DIRECTV Group, certain equity interests held by the employees of PanAmSat whose equity interests had not been cashed out, and the interests held by those stockholders who validly had exercised their appraisal rights under Delaware law) would be converted into the right to receive \$23.50 in cash per share. After consummation of the first step, PanAmSat would be a wholly-owned subsidiary of The DIRECTV Group except for the equity interests held by the employees whose equity interests had not been cashed out in the first step transaction. The Transaction Agreement also contemplates that PanAmSat would assign certain of its satellites to one or more wholly-owned subsidiaries. The second step in the transaction would occur two business days after consummation of the first step and would involve PanAmSat's repurchase of a portion of the shares of common stock held by the subsidiaries of The DIRECTV Group and the Private Equity Funds' purchase of the remaining portion of the shares of common stock. After consummation of the second step, the Private Equity Funds, through the Transferees, would own the entire outstanding equity interest in PanAmSat other than the equity interests held by the PanAmSat employees who had agreed not to cash out their interests in the transaction.

III. THE PARTIES

The DIRECTV Group and News Corp. (Transferors). The DIRECTV Group, through its wholly-owned subsidiaries, at present beneficially owns equity and voting interests of approximately 80.4 percent in PanAmSat. It also indirectly owns all of the issued and outstanding interests of DIRECTV Enterprises, LLC, a direct broadcast satellite ("DBS") operator. News Corp., a corporation formed under the laws of South Australia with securities that are publicly traded on both the New York Stock Exchange and the Australian Stock Exchange, indirectly holds a 34 percent equity interest in The DIRECTV Group.² Applicants advise that News Corp. plans to reincorporate in the United States and will be filing applications requesting consent to a *pro forma* transfer of control of various Commission licenses, including the licenses held by PanAmSat LC, and ask the Commission to approve the transfer of control of PanAmSat as controlled both before and after News Corp.'s *pro forma* transfer of control.

PanAmSat and PanAmSat LC (Licensee). PanAmSat is a publicly-traded Delaware corporation. Through its subsidiaries, PanAmSat owns and operates a fleet of geostationary-satellite orbit fixed-satellite service satellites around the world, as well as a system of teleports and complementary terrestrial facilities. PanAmSat LC holds various non-common carrier licenses and authorizations used in connection with the operation of the PanAmSat system.³

² See *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, for Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473, 483 ¶ 14 (2004).

³ Attachment A lists the licenses and authorizations that are held by PanAmSat LC and are the subject of the Applications.

Constellation (Transferee). Constellation is a newly-formed limited liability company affiliated with KKR. KKR is a U.S. private investment firm that makes equity investments through private equity partnerships on behalf of itself and its investors. The Applicants state that most of KKR's investors are institutions, including state and corporate pension funds, banks, insurance companies, and university endowments. On May 18, 2004, Applicants advised that a fund associated with KKR indirectly held an equity interest of approximately 36 percent in NewSouth Communications Corp., a competitive local exchange carrier that provides telecommunications services in nine southern states. The May 18, 2004 filing states that the planned May 2004 consummation of the merger of NewSouth Communications Corp. with NuVox Communications, Inc., a facilities-based communications provider offering services primarily in the midwestern and southeastern United States, would reduce KKR's interest in the merged company by one-half.⁴

Carlyle PanAmSat I and Carlyle PanAmSat II (Transferees). Carlyle PanAmSat I and Carlyle PanAmSat II are wholly owned, respectively, by Carlyle Partners III Telecommunications, L.P. ("Carlyle Partners III Telecommunications") and CPIII Coinvestment, L.P. ("CPIII Coinvestment"), private equity partnerships managed by the principals of Carlyle, a Washington, D.C.-based private equity firm. The Applicants state that Carlyle invests in buyouts and venture, real estate and leveraged finance in North America, Europe, and Asia, focusing on aerospace and defense, automotive and transportation, consumer, energy and power, healthcare, industrial, technology and business services, and telecommunications and media. The holdings of other funds affiliated with Carlyle currently include WCI Cable, Inc. and its affiliates, which hold section 214 authorizations, submarine cable landing and other licenses, and a minority interest in Mainstream Data, Inc., an earth station licensee.

PEP PAS and PEOP PAS (Transferees). PEP PAS and PEOP PAS are wholly owned, respectively, by Providence Equity Partners IV, LP ("PEP IV LP") and Providence Equity Operating Partners IV, LP ("PEOP IV LP"), private equity partnerships managed by the principals of Providence, a U.S. private investment firm. The Applicants state that Providence specializes in equity investments in, among other things, communications and media companies around the world. PEP IV LP's U.S. holdings include Northland Cable Networks LLC, a regional cable system operator with satellite earth station, cable television relay service and other licenses, Mountain States Cable Television, a regional cable system operator, Yankee Entertainment Sports Network, LLC, a regional cable programming network, an interest in Consolidated Communications, a local telephone company, and an interest in Madison River Telephone Company, whose subsidiaries hold section 214, Local Multipoint Distribution Service and other authorizations.

IV. PUBLIC INTEREST SHOWING

The Applicants contend that approval of the proposed transaction will create public interest benefits without producing public interest harms in any relevant market. They state that The DIRECTV Group's sale of its interest in PanAmSat will enable The DIRECTV Group to focus more effectively on its DBS business, and that over time, absent a sale, The DIRECTV Group's intention to center its business on areas not involving the operation of a fixed satellite service system could slow the growth and harm the competitiveness of PanAmSat. The Applicants also state that, because each of the private equity partnerships has a proven track record of enabling companies in which it invests to maximize their potential, the proposed transaction will reinvigorate PanAmSat's business through greater access to capital that will facilitate PanAmSat's efforts to expand its customer base and develop new products and services. Further, the Applicants state that the proposed transaction does not raise foreign ownership concerns, because PanAmSat holds only non-common carrier licenses that are not subject to the foreign

⁴ The merger occurred on May 24, 2004. See <http://merger.nuvox.com/interstitial/pr.php?style=nuvox>.

ownership restrictions set forth in section 310(b) of the Communications Act⁵ and that, in any event, foreign ownership is limited and widely distributed among a variety of passive investors. Finally, the Applicants assert that because the Private Equity Funds and their affiliates currently have no ownership interests in any other satellite operator, the proposed transaction presents no competitive concerns.

V. GENERAL INFORMATION

The Applications to transfer control of the licenses and authorizations referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return the Applications if, upon further examination, they are determined to be defective and not in conformance with the Commission's rules, regulations, or policies. Final action will not be taken on the Applications earlier than 31 days following the date of this Public Notice.⁶

Interested parties may file comments regarding or petitions to deny the Applications no later than **July 2, 2004**. Oppositions or responses to these comments and petitions may be filed no later than **July 12, 2004**. Replies may be filed no later than **July 19, 2004**. All filings concerning matters referenced in this Public Notice should refer to **IB Docket No. 04-209**.

Under the Commission's procedures for the submission of filings and other documents,⁷ submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

- **If filed by ECFS,**⁸ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.
- **If filed by paper,** the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed

⁵ See 47 U.S.C. §310(b).

⁶ See 47 U.S.C. §309(b).

⁷ See *Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, 16 FCC Rcd 21,483 (2001); see also *FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, Public Notice, 16 FCC Rcd 22,165 (2001); *Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, Public Notice, 18 FCC Rcd 16,705 (2003).

⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11,322 (1998).

to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to:

- (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., at fcc@bcpiweb.com or (202) 488-5563 (facsimile);
- (2) James Ball, Chief, Policy Division, International Bureau, at james.ball@fcc.gov or (202) 418-2824 (facsimile);
- (3) Kathleen Collins, Policy Division, International Bureau, at kathleen.collins@fcc.gov or (202) 418-2824 (facsimile);
- (4) JoAnn Lucanik, Satellite Division, International Bureau, at joann.lucanik@fcc.gov or (202) 418-0748 (facsimile);
- (5) Susan O'Connell, Policy Division, International Bureau, at susan.o'connell@fcc.gov or (202) 418-2824 (facsimile);
- (6) David Krech, Policy Division, International Bureau, at david.krech@fcc.gov or (202) 418-2824 (facsimile); and
- (7) Neil Dellar, Office of General Counsel, at neil.dellar@fcc.gov, or (202) 418-1234 (facsimile).

Copies of the Applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpiweb.com. The Applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Applications also are available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>. Additional information regarding the transaction will be available on the FCC's Office of General Counsel's website, <http://www.fcc.gov/ogc>, which will contain a fully indexed, unofficial listing and electronic copies of all materials in this docket. Alternate formats of this public notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or send an e-mail to access@fcc.gov.

For further information, contact the Policy Division, International Bureau at 202-418-1460.

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ATTACHMENT A

Satellite Space Stations:

File Number	Licensee/Call Signs
	PanAmSat Licensee Corp. (Space Station Licenses) <i>Call Sign(s):</i>
SAT-T/C-20040518-00100	CS91004 (PAS-5); PAS-4; PAS-2R; S2359 (PAS-8B); S2368 (PAS-1R); S2380 (PAS-23); PAS-6; S2382 (PAS-24); S2378 (Galaxy X-R); Galaxy V; S2146 (Galaxy IX); S2131 (Galaxy I-R(S)); SBS-6; S2253 (Galaxy XI); S2381 (Galaxy III-C); Galaxy III-R; Galaxy VIII(I); S2377 (Galaxy IV-R); S2422 (Galaxy XII); S2386 (Galaxy XIII); S2423 (SBS-6R); S2385 (Galaxy XIV); PAS-4R; PAS-9; PAS-21
SAT-T/C-20040527-00108	KS39 (SBS-4) PanAmSat Licensee Corp. (Space Station Special Temporary Authorizations) <i>Call Sign(s):</i>
SAT-STA-20040518-00099	PAS-9
SAT-STA-20040518-00098	S2460 (PAS-5)
SAT-STA-20040518-00097	S2146 (Galaxy IX)
SAT-STA-20040518-00096	S2422 (Galaxy XII)
SAT-STA-20040518-00094	Galaxy VIII(I)

Satellite Earth Stations:

File Number	Licensee/Call Signs
SES-T/C-20040518-00692	PanAmSat Licensee Corp. <i>Call Sign(s):</i> E010280 (VSAT Transmit/Receive)
SES-T/C-20040518-00694	PanAmSat Licensee Corp. <i>Call Sign(s):</i> E970051; E950067; E000063; E000363; E010113; E010131; E010133; E4132; E900089; E920340; E920377; E930088; E940368; E950502; E959508; E980501; E980503; E990091; E990323; E990334; E990364; E990365; E2178; E3943; E860175; E881304; E900621; E900757; KL92; E000048; E000049; E000274; E000364; E000488; E010019; E010112; E7465; E881286; E890530; E940333; E940532; E950267; E950307; E970352; E970391; E970392; E980460; E980467; E980502; E990092; E990093; E990214; E990223; E990224; E990363; E990433; KA244; KA245; KA391; KA450; KA71; E020309; E030012; E990024; E030106; E030096; E030232; E030072; E030073; E030174; E030175; E030306; E030307; E990441; E020260; E030182; E960411; E980069; KA416; E990056; E970189 (Transmit/Receive)
SES-T/C-20040518-00693	PanAmSat Licensee Corp. <i>Call Sign(s):</i> E990055; E010118 (Temporary-fixed; transmit/receive authorization)